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6 Attorneys for Plaintiff  
 7 UNITED STATES OF AMERICA

8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,	)	CRIMINAL CASE NO. 07cr3355-LAB
	)	
11 PLAINTIFF,	)	UNITED STATES' TRIAL
	)	MEMORANDUM
12 V.	)	
	)	DATE: March 20, 2008
13 MARK NEEL,	)	TIME: 9:00 a.m.
	)	
14 DEFENDANT,	)	
	)	

15  
 16 The plaintiff, UNITED STATES OF AMERICA, by and through its  
 17 counsel, Karen P. Hewitt, United States Attorney, and Steve Miller,  
 18 Assistant United States Attorney, respectfully submits the following  
 19 trial memorandum of facts and law in the above-captioned matter.

20 **I**

21 **STATEMENT OF CASE**

22 **A. INDICTMENT**

23 Defendant MARK NEEL was indicted by a federal grand jury on one  
 24 count of bringing an alien into the United States for commercial  
 25 advantage, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), and one count  
 26 of failing to present an alien when bringing the alien into the United  
 27 States, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C.  
 28 § 2.

1       **B. TRIAL STATUS**

2       Trial is scheduled for Thursday, March 20, 2008, at 9:00 a.m.  
3 before the Honorable Larry A. Burns, United States District Court  
4 Judge. The United States anticipates that its case-in-chief will last  
5 one day.

6       **C. STATUS OF COUNSEL**

7       Defendant is represented by Robert Rexrode.

8       **D. CUSTODY STATUS**

9       Defendant is in custody.

10      **E. INTERPRETER**

11      The United States will provide an interpreter for the material  
12 witness. The defendant does not need an interpreter.

13      **F. JURY WAIVER**

14      Defendant has not waived trial by jury.

15      **G. PRE-TRIAL MOTIONS**

16      Defendant filed motions to compel discovery, to dismiss the  
17 Indictment and to file further motions.

18      **H. STIPULATIONS**

19      To date, the parties have not agreed to any stipulations.

20                                   **II**

21                                   **STATEMENT OF FACTS**

22      On November 12, 2007, at approximately 11:01 p.m., defendant Lori  
23 Stauffer drove and MARK NEEL rode as a passenger in a black Mercedes  
24 Benz 190E to the San Ysidro Port of Entry. At the primary inspection  
25 area, Stauffer was unable to open the trunk. When the inspector  
26 looked inside the rear of the car, he found a person concealed behind  
27 the rear seat area. The car was referred to secondary inspection.  
28

1 In the secondary inspection area, inspectors removed the rear  
2 seat cushion and discovered a red metal container that was an  
3 alternate fuel source. The inspector removed a Hispanic male who was  
4 concealed in the gas tank compartment.

5 Stauffer confessed after she waived her Miranda rights. She has  
6 pled guilty to Count 1 of the Indictment charging the 3-year minimum  
7 mandatory crime and is expected to testify as a witness at trial.

8 Defendant NEEL was advised of his Miranda rights and agreed to  
9 make a statement. His statement was video recorded and a transcript  
10 has been prepared. The transcript is appended to this trial  
11 memorandum. NEEL told agents that he met a certain person in "T.J."  
12 who offered him a job because NEEL needed money. He was offered the  
13 job on Saturday around 5:00 in the evening. NEEL said it was quick  
14 money but did not know how much he was to be paid. NEEL was not  
15 present when the alien was loaded in the car, but he knew the alien  
16 was male because he saw the alien in the cell after his arrest.

17 During the interview, the agent asked NEEL "Alright. Was she  
18 aware that there was an illegal alien inside the vehicle?" NEEL  
19 stated "I'm not sure, don't know." When asked "Were you aware there  
20 was an illegal alien inside the vehicle?" NEEL replied "Yes, I did."

21 The material witness is Modesto Morales-Castillo. He told the  
22 agents that he is a Mexican citizen with no right to come to the  
23 United States. He traveled from Cuernavaca, Morelos to Tijuana by  
24 bus. He stayed in Tijuana for about three days when he was approached  
25 by an Hispanic male at the bus depot and take to a hotel. Morales-  
26 Castillo spend one day at the hotel and was taken to a house. He said  
27 a tall white male with a goatee and a white female were present when  
28 he was being concealed in the car.

1 **III**

2 **WITNESSES**

3 The United States may call the following witnesses in its case-  
4 in-chief, although it reserves the right to change the order of these  
5 witnesses, substitute witnesses, add witnesses or omit one or more  
6 witnesses.

- 7 1. Eric Velazquez, CBP Officer  
8 2. John Ervin, CBP Officer  
9 3. Rick Gaytan, CBP Officer  
10 4. Shawn Kitaura, CBP Officer  
11 5. Lori Stauffer  
12 6. Modesto Morales-Castillo.

13 **IV**

14 **PERTINENT LAW**

15 A. **BRINGING IN ILLEGAL ALIENS FOR FINANCIAL GAIN**

16 The essential elements of a violation of Title 8, United States  
17 Code, Section 1324(a)(2)(B)(ii) are:

- 18 1. defendant knowingly and intentionally brought a person  
19 to the United States;  
20 2. the person was an alien who had not received prior  
21 official authorization to come to, enter or reside in  
22 the United States;  
23 3. defendant knew or acted in reckless disregard of the  
24 fact that the person was an alien who had not received  
25 prior official authorization to come to, enter, or  
26 reside in the United States;  
27 4. defendant brought the alien to the United States for  
28 the purpose of commercial advantage or private  
financial gain; and  
5. defendant acted with the intention of violating the  
immigration laws of the United States.

1 B. BRINGING IN ILLEGAL ALIENS WITHOUT PRESENTATION

2 The essential elements of a violation of Title 8, United States  
3 Code, Section 1324(a)(2)(b)(iii) are:

- 4 1. defendant knowingly and intentionally brought a person  
5 to the United States;
- 6 2. the person was an alien who had not received prior  
7 official authorization to come to, enter or reside in  
8 the United States;
- 9 3. defendant knew or acted in reckless disregard of the  
10 fact that the person was an alien who had not received  
11 prior official authorization to come to, enter, or  
12 reside in the United States;
- 13 4. that upon arrival in the United States or at the port  
14 of entry, the defendant did not immediately bring and  
15 present the alien to an appropriate immigration officer  
16 at a designated port of entry;
- 17 5. defendant acted with the intention of violating the  
18 immigration laws of the United States.

14 V

15 PROPOSED JURY INSTRUCTIONS

16 The United States will provide a complete copy of its jury  
17 instructions to the Court and defense counsel under separate cover.

18 VI

19 EXHIBIT LIST

20 The United States will provide an exhibit list on the day of  
21 trial.

22 VI

23 ANTICIPATED LEGAL ISSUES

24 A. Co-Defendant's Statements

25 NEEL moves to exclude Ms. Stauffer's statements. This issue is  
26 moot because Ms. Stauffer has pled guilty and any of her statements  
27 will be as direct testimony at trial.

1       B.   Statements of Financial Gain

2       NEEL moves to exclude statements related to financial gain. The  
3 Government will offer defendant NEEL's own statements that he did this  
4 because he needed money. Furthermore, he is liable for committing  
5 this offense by aiding and abetting the financial gain or commercial  
6 advantage of another person. Therefore, the material witness will  
7 testify regarding the details of his arrangements to be smuggled and  
8 how he was going to pay. NEEL's efforts to bring the alien to the  
9 United States assisted the organizer by bringing the paying customer  
10 to the person to be paid. Furthermore, any financial arrangements  
11 made by the material witness with an unavailable witness was a  
12 commercial transactions. As a commercial transaction, there was an  
13 offer and an acceptance. Consequently, the statement were acts of  
14 independent legal significance that are admissible hearsay.

15       C.   609 and 404b Evidence

16       NEEL moves to exclude evidence of prior act and prior felony  
17 convictions. The Government does not intend to offer evidence of  
18 prior acts that are not inextricably intertwined with the present  
19 offense.

20       The Government reserves the right to offer evidence of  
21 defendant's prior felony conviction to impeach defendant's testimony  
22 if he elects to testify. Defendant was convicted of forgery of a  
23 financial instrument in Dallas in 2004 and was sentenced to 15 months  
24 prison. Defendant was also convicted of possession of marijuana in  
25 San Diego in 2005 and sentenced to 2 years custody. The San Diego  
26 docket imposed the 2 years concurrently to any parole revocation in  
27 Texas. Should defendant testify, the Government will seek to offer  
28 evidence that defendant is a convicted felon.

VIII

VOIR DIRE QUESTIONS

The Government requests permission to inquire into the following topics during voir dire.

1. Is there any juror who does not believe they can pass judgment on another person?

2. Is there any juror who is acquainted with any other juror on the venire prior to their service here today?

3. Is there any juror who has had an experience with law enforcement that they would characterize as unpleasant?

4. Is there any juror who has never had an experience of crossing the international border?

5. Is there any juror who has had an experience of being referred for a secondary inspection?

DATED: March 18, 2008

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

s/Steve Miller

STEVE MILLER  
Assistant U.S. Attorney

1 UNITED STATES OF AMERICA

2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA, ) Criminal Case No. 07cr3355-LAB  
4 Plaintiff, )  
5 v. ) CERTIFICATE OF SERVICE  
6 MARK NEEL, )  
7 Defendant. )  
8

9 IT IS HEREBY CERTIFIED THAT:

10 I, Steve Miller, am a Citizen of the United States over the age  
11 of eighteen years and a resident of San Diego county, California. My  
12 business address is 880 Front Street, San Diego, California 92101-  
13 8893. I am not a party to the above-entitled action. I have caused  
14 service of the United States' Trial Memorandum on the following  
15 parties by electronically filing the foregoing with the Clerk of the  
16 District Court using its ECF system, which electronically notifies  
17 them.

18 1. Robert Rexrode

19 I hereby certify that I have caused to be mailed the foregoing,  
20 by the United States Postal Service, to the following non-EFC  
21 participants on this case n/a the last known address, at which place  
22 there is delivery service of mail from the United States Postal  
23 Service.

24 I declare under penalty of perjury that the foregoing is true and  
25 correct.

26 Executed on March 18, 2008

27 s/Steve Miller  
28 STEVE MILLER